

1 March 1973

MEMORANDUM FOR THE RECORD

SUBJECT: GSA Meeting - Public Building Amendments

1. The Public Building Amendments of 1972 authorize the Administrator of General Services to charge anyone furnished space and services. The pertinent subsection appears as an amendment to the Federal Property and Administrative Services Act of 1959 at 40 USCA 490 (j).

STATINTL

2. Today, [REDACTED] and I met with certain General Services Administration (GSA) personnel to discuss informally the applicability of the space charge feature to the Headquarters Building. Representing GSA were Messrs. Isaac Friedlander, Executive Director, Public Buildings Service, his Deputy, Robert DiLucio, and John Mulligan, GSA/OGC.

3. By way of introducing the subject, GSA was told that, according to our interpretation of subsection (j), the Headquarters Building space was not subject to assessment. We acknowledged the Agency's liability for charges incident to Administrator-furnished services, but we suggested that a different result obtained as regards the space itself because it was not Administrator-furnished. In support of this proposition, we referred to the 1955 Act authorizing the Director of Central Intelligence to construct the Headquarters facility together with the Acts of 1956 and 1957 that appropriated the construction funds directly to the Agency.

4. Friedlander declined to accept our position. In his view, all Government-owned buildings were subject to assessment, and the manner in which the occupying agency may have obtained its construction funds was not a consideration. As an example, he stated that the Pentagon will be assessed space user charges notwithstanding that the construction monies may have been appropriated directly to the military.

OL 3 1233

SUBJECT: GSA Meeting - Public Building Amendments

Further, such charges will also be levied against the several regional Social Security Centers, even though those structures may have been built using trust fund monies.

5. Mulligan stated that GSA considers the space charges to be applicable in all instances where GSA has "space assignment responsibility." Our efforts to obtain a meaningful definition of the concept proved unavailing. Mulligan was disposed to cite the Reorganization Plan No. 18 as the source of this GSA responsibility. Recalling that that Plan had been issued almost 10 years before the Headquarters Building was constructed, we suggested that it was not relevant to the issue here.

6. Parenthetically, Reorganization Plan No. 18 transferred to the Administrator of General Services all functions with respect to assigning and reassigning space in Government-owned or leased buildings together with all functions concerned with their operation, maintenance, and custody. Excepted were such functions with respect to (a) buildings located in a foreign country; (b) buildings located on the grounds of any camp post or arsenal; (c) any building the Administrator finds to be utilized for special purposes; and (d) the Treasury Building, Bureau of Engraving and Printing Building, et al. The Plan became effective on July 1, 1950. Mulligan said our Headquarters Building could not be considered as "special purpose."

7. We then pointed the discussion in the direction of GSA's draft implementing regulations. In this connection we called attention to the fact that these spoke in terms of "space controlled by GSA" or "GSA-controlled space." We noted that this was not consistent with the former Administrator's testimony before the Congress in that he had stated that charges were to be assessed in cases of "GSA-operated buildings." We also stated that, as a consequence of the Director's authority to protect intelligence sources and methods, the Headquarters Building could not be considered GSA-controlled. DiLucio acknowledged that "GSA-controlled" was an inappropriate term. He stated that a subsequent draft will speak in terms of "space for which GSA has space assignment responsibility."

8. We asked how GSA intended to treat the Atomic Energy Commission, whose Germantown installation had been constructed by direct appropriation funds. According to DiLucio, AEC is to be billed for that space. He admitted, however, that to date AEC has not responded, although it has been informally advised of GSA's intention in this regard.

SUBJECT: GSA Meeting - Public Building Amendments

9. Friedlander suggested that, if we wished to avoid the space user charge, we should seek an exemption which the Administrator may grant upon a showing that the charges are infeasible or impractical. We said the exemption approach was not appropriate if our position were correct; viz, the assessment for user charges was authorized only in cases of Administrator-furnished space, the Headquarters Building was not Administrator furnished, ergo, the space was not subject to assessment. This argument was declined, albeit graciously.

10. Friedlander suggested that the Director might wish to state the Agency's position formally for the Administrator's consideration. Believing that such an approach at this time to be premature, we demurred. We suggested another meeting, at which time we would present excerpts from pertinent statutes, together with other documentary materials for GSA's informal consideration. We suggested that the general counsels of the respective agencies should be present. Friedlander accepted this. He was told, however, that we would have to seek our General Counsel's reaction to this proposal, which we had presumed to offer.

11. While the session was conducted in an atmosphere of cordiality, it was made quite apparent that GSA will resist to the utmost any Agency effort to avoid the space user charge. It is obvious that they intend to permit none to escape the "space assignment responsibility" net. This suggests we may want to discontinue further discussion with GSA and turn to OMB. Our objective here would be to obtain a policy decision as to whether the Agency's continued use of the Headquarters space is dependent upon its making annual expenditures for an asset it has already "purchased."

STATINTL


Assistant General Counsel

Distribution:

Orig - AGC/OL File

1 - OGC

(1) - OL/RECD

1 - AGC/OL Chrono

1 - OL Official

 via D/L

AGC:R 